

## FISCAL NOTE

### SB 296 - HB 712

February 13, 2001

**SUMMARY OF BILL:** Provides the following changes regarding *lesser included* criminal offenses:

- deletes the provision that it is the duty of the judge in all cases of criminal prosecution for any felony to charge the jury as to all the lesser included offenses without the request of the defendant to do so;
- no case shall be reversed or overturned for failure of the court to charge a lesser included offense unless the party seeking the reversal or overturn conviction has requested, in writing and prior to jury charge, the specific lesser included offense;
- failure of the trial judge to instruct the jury on any such offenses not requested as a lesser included offense will not be grounds for reversal or conviction being overturned;
- failure to object to erroneous inclusion of a lesser included offenses in the charge to the jury will constitute an amendment to the indictment;
- there will be no lesser included offense to felony murder;
- applies criteria for the requisite mental state for lesser included offense.

### ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$1,008,800/Incarceration\***

**Decrease State Expenditures - Exceeds \$100,000**

Assumes:

- Fewer cases will be convicted of a lesser included offense since the judge will no longer be obligated to charge the jury on those offenses unless requested by the parties and convictions of the higher classification will result in increased costs for incarceration.
- There will be no lesser included offense to the offense of felony murder.
- Fewer convictions will be reversed or overturned when lesser included offense is barred as an issue for appeal and sentences for the higher classification offense will be served.
- Barring the issue of lesser included offense on appeal unless the party had requested it will decrease state expenditures for hearing appeals and retrying cases.
- In some cases where the jury is not given an option of convicting of a lesser included offense, the jury may choose to acquit on the indicted offense.

\*Section 9-4-210, TCA, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated for operating cost, in current dollars, shall be based upon the highest cost of the next 10 years, beginning with the year the additional sentence to be served impacts the correctional facilities population.*

### CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James A. Davenport, Executive Director

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